

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PHILLIP B. HAUSKEN,

Plaintiff,

v.

LYNN BELANGER and SGT.
DUNLEVY,

Defendants.

NO: 2:15-cv-00025-SAB

ORDER DENYING LEAVE TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING ACTION

By Order filed March 25, 2015, the Court instructed Mr. Hausken to show cause why he should not be precluded from proceeding *in forma pauperis* in this action pursuant to 28 U.S.C. § 1915(g). ECF No. 3. Plaintiff did not respond to this Order and has filed nothing further.

The Court found that at least three of Plaintiff's prior civil actions, filed while he was incarcerated, have been dismissed as frivolous, malicious, or for

1 failure to state a claim upon which relief may be granted,¹ including: *Hausken*
2 *v. Vande Weye, et al.*, Western District cause number 3:13-cv-05560-BHS
3 (dismissed as malicious on 8/27/13, ECF No. 12, with instructions to count it as
4 a strike under 28 U.S.C. § 1915(g), and to revoke *in forma pauperis* status for
5 the purpose of appeal, although no appeal was taken);² *Hausken v. Belanger et*
6 *al.*, Eastern District cause number 2:13-cv-00259-JPH (dismissed with
7 prejudice for failure to state a claim upon which relief may be granted on
8 11/22/13, ECF No. 28, notice of appeal filed on 11/24/14, but voluntarily
9 dismissed and Mandate issued on 12/15/14, ECF No. 40); and *Hausken v.*
10 *Smolech, et al.*, Western District cause number 3:14-cv-05037-BHS (dismissed
11 as malicious on 4/7/14, ECF No. 12, with instructions to count it as a strike

12 ¹ *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244,
13 248 (9th Cir. 1992) (taking notice of judicial proceedings in another court); *see*
14 *also Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (matters subject to
15 judicial notice may be considered under Fed. R. Civ. P. 12(b)(6)).

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17 ² The Court notes further that the Report and Recommendation in that case, ECF
18 No. 6, which was adopted on 8/27/13, specifically stated, “This would be
19 plaintiff’s second strike. Plaintiff had an action dismissed for failure to state a
20 claim earlier in 2012 [sic], 12-0190RAL.” ECF No. 6 at 3, lines 11-12.

1 pursuant to 28 U.S.C. § 1915(g), and to revoke *in forma pauperis* status for the
2 purpose of appeal, although no appeal was taken). Plaintiff has failed to
3 demonstrate that he was “under imminent danger of serious physical injury,” at
4 the time he signed his civil rights complaint on November 25, 2014, ECF No. 1
5 at 4. *See* 28 U.S. C. § 1915(g).

6 Therefore, **IT IS ORDERED** Plaintiff’s Application to Proceed *in forma*
7 *pauperis* is **DENIED**. Although granted the opportunity to do so, Plaintiff has
8 not paid the \$400.00 filing fee to commence this action. Accordingly, **IT IS**
9 **ORDERED** this action is **DISMISSED** for failure to pay the filing fee under 28
10 U.S.C. § 1914.

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter
12 this Order, enter judgment, forward a copy to Plaintiff at his last known address,
13 and close the file. The Court certifies any appeal of this dismissal would not be
14 taken in good faith.

15 **DATED** this 12th day of May 2015.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned above a horizontal line.

20 Stanley A. Bastian
United States District Judge